

**Town of Foxborough
Conservation Commission Minutes
February 23, 2015**

Members Present: Robert Boette (Chair), Eric Nelson (Clerk), Judith Johnson (Vice Chair),
Douglas Davis, Valerie Marshall, and James Marsh

Members Absent: Michael Kelleher

Staff Present: Jane Sears Pierce, Conservation Manager, and Diana Gray, Land Use Administrator

Others Present: See attached sign-in sheet

Meeting Opened

Bob Boette opened the meeting, held in the Boyden Library, at 7:00 p.m.

Sprague Road, Water Department RFD

The Commission met with Town Engineer Chris Gallagher in regards to this application. Mr. Gallagher explained that in the past, the Sprague Road pump station had a few coliform hits, due to a lack of chlorine. Therefore, they were proposing to increase the size of the site's water pipe, to increase the contact time of the water with the chlorine. He stated that under the recently revised WPA regulations [310 CMR 10.02(2)(b)1], the installation of underground utilities within existing paved roadways is considered to be an exempt minor activity.

A 36" RCP culvert for the Cocasset River that runs under the roadway will need to be crossed. Mr. Gallagher explained that they would like to go over the culvert, but may need to go under it, depending on its depth. If they need to go under the culvert, directional drilling will be used. They will probably need to dewater the site, so dewatering specifications will be reviewed and approved by Ms. Pierce, if needed. Compost tubes will be used in work areas, except for the area along the base of the hillside located between the road and the river. Mr. Gallagher will work with Ms. Pierce regarding the use of turtle protocols, since a rare turtle inhabits the area. The work will take approximately one week and they hope to do it before the spring thaw.

Ms. Pierce noted that signed and stamped plans are needed for the files; Mr. Gallagher stated that he would have Roger Hill sign and stamp the plans.

Motion was made by Ms. Johnson to close the hearing for Spruce Street; seconded by Mr. Davis. **Vote: 6-0-0**

Motion was made by Ms. Johnson to issue a Negative Determination with changes as discussed for Sprague Road; seconded by Mr. Davis. **Vote: 6-0-0**

22 Morse Street RFD

The Commission met with the applicant's representatives, Briscoe Lang of PARE Corp and Rich Leslie of Bay Colony. Mr. Lang explained that they planned to demolish the existing house and build a new house on the lot. An isolated wetland is located adjacent to the southern boundary of the lot and a second isolated wetland is located across the street from the project. He stated that no rare species were observed in the areas.

The proposed single family house will be 24' x 36' with an attached garage. The existing shed and paved areas will be removed, as well as the site's cesspool and the new home will be connected to public sewer. Mr. Lang explained that the current paved impervious area, which is closest to the wetland, will be replaced with a vegetated area that will result in a 475 sq. ft. reduction in impervious area. He stated that one corner of the new house will be 48 feet from the wetland.

No tree removal is proposed and silt sock erosion controls will be used, as shown on the plan. There may be a vernal pool across the street, but no work is proposed within its 100' buffer.

Ms. Marshall was concerned that allowing this type of work without an NOI would be setting a poor precedent, adding that the amount of work should require a Positive Determination and the filing of a NOI. Mr. Lang stated that the DEP is in favor of Negative Determinations when there are no adverse effects to wetland areas.

Motion to issue a Positive Determination at 22 Morse Street due to the amount of work being done by was made by Ms. Marshall; there was no second; Motion Withdrawn

The Commission was concerned about monitoring the site's construction without an Order of Conditions. Mr. Lang pointed out that a negative determination does not prevent monitoring; adding that requiring an NOI would add costs and delays to the project.

Ms. Pierce suggested an "experimental" compromise of restoring a portion of the property's southern boundary (closest to the BVW) with native shrubs with wildlife habitat value.

Mr. Marsh asked what percent of the new home would be outside of the previously disturbed area. Mr. Lang responded that 15% would be outside of this area. The Commission asked whether the applicant might agree to do some restoration work as a type of modified restoration project. The Commission agreed that this could be a good compromise.

Mr. Lang indicated that he was agreeable to this compromise/solution and also offered to extend the sock around to the rear of the property to delineate the limit of work.

Motion was made by Mr. Davis to issue a Negative Determination with a condition for a Modified Restoration Order, as discussed; seconded by Mr. Nelson. **Vote: 6-0-0**

46 Taylor Road, DEP #157-532

Mr. Boette opened the hearing by reading the legal notice, posted in The Foxboro Reporter. Donald Seidburg attended the meeting for John Glossa, the Applicant's representative, since Mr. Glossa was attending the Board of Health meeting. Mr. Seidburg indicated that the applicant, who was renovating the existing house, proposed to install a new septic system, as well as a new garage. The existing cesspools will be abandoned and a new Presby septic system will be installed. Silt fencing will be used.

A letter had been received from Mass Natural Heritage and Endangered Species' (NHESP), advising that their review of the project under MESA was still ongoing. Mr. Seidburg explained that Mr. Glossa was before the Board of Health to get their approval of the Presby system.

The Commission indicated that they wanted to have the Board of Health's and NHESP's approvals before closing this hearing, since there may be conditions that will need to be included in the order.

Motion was made by Ms. Marshall to continue the NOI hearing for 46 Taylor Road, DEP #157-532 to March 23, 2015; seconded by Ms. Johnson. **Vote: 6-0-0**

204 East Street, Proposed Forge Estates Subdivision, DEP #157-528, Continued NOI

New Information, received 2/20/15: Plan Set, revised 2/12/15

2/12/15 Coneco Response Letter (with attachments) to 12/19/14 BSC Peer Review Letter

The Applicant's representatives, Attorney Dan Seigenberg, Engineer Shane Oates (Coneco) and Environmental Scientist Chris Lucas (Lucas Environmental), attended the continued hearing.

Mr. Boette began discussions by informing the applicant that the Commission's first order of business will be to determine whether or not this project qualifies for Limited Project status.

Mr. Oates stated that the project was applied for as a Limited Project due to the access of the site for future development, adding that BSC Group had addressed this issue somewhat in their initial comments.

Atty. Seigenberg explained that his letter of January 7, 2015 explained to the Commission that the applicant has tried to gain access to the site from the nearby abutters, but have not been able to negotiate with any of the abutters. This leaves only one possible access to the site, which will require the construction of a bridge.

Atty. Seigenberg also contacted local Real Estate Agent, Millie Cetrone, to ask her to research whether the project could be located anywhere else in town. Ms. Cetrone stated that there are no other suitable locations in Foxborough that are available for this project.

Mr. Boette stated that the site currently has access to the upland portion of the property through the property's existing driveway; Ms. Johnson agreed. Mr. Oates responded that the current access is restricted to use as a driveway for one dwelling only and cannot be made into a subdivision roadway.

Mr. Lucas explained that the current access has zoning issues regarding accessing the site for more than one lot.

Ms. Marshall pointed out that the applicants were saying that they could not access the property's uplands. She stated that the applicant's Alternative Analysis has not properly addressed the alternative accesses to the property to be able to determine whether the Analysis is adequate. Ms. Marshall stressed that the Canoe River Aquifer ACEC was created because its groundwater is a Sole Source Aquifer that serves more than 66,000 people who have no other source of drinking water.

Ms. Marshall noted that the Canoe River Aquifer ACEC was deemed to be a "Class B, High Quality Waters," pursuant to the Mass. Surface Water Quality Standards (314 CMR 4.00). Under the law's antidegradation provisions (314 CMR 4.04), any new or increased discharge needs to be authorized by the DEP first, but this has not been adequately addressed in the Alternative Analysis.

Ms. Marshall stated that the Act's Stormwater requirements have not been met (per BSC's review letter), there is no snow removal plan shown on the revised plans, and a wildlife evaluation has not been provided. In addition, the 12 lots' lawns will have a negative impact on the area, inadequate BMPs are proposed, and there are no soil tests at the BMPs' locations. She felt that all of these items would have serious impacts on the Sole Source Aquifer, stressing that there are no sources of alternative water supplies for the people in four towns who rely on this aquifer, so the Commission must protect it.

Mr. Oates replied that the stormwater is required to be clean both post and pre-development, which they will adhere to. He indicated that third party reviewer, Dominic Rinaldi, spoke to Stormwater Standard #6 requirements in his letter, so they will work with Mr. Rinaldi on that issue.

Ms. Marshall stated that based on how the ACEC is classified (Class B), the "4.04" antidegradation provision requires DEP approval for any new or proposed discharges, including non-point discharges.

Mr. Oates stated that he has been working with BSC since they submitted their response letter and will continue to do so. He also stated that a snow storage area is shown on the revised plan set and soil testing was completed in January before the snowstorms.

Ms. Marshall, indicating that she had not seen any of the new information until the meeting, would like the DEP authorization looked into before the next meeting.

Ms. Marshall also felt that the bridge footings would affect the water flow. Mr. Oates replied that different bridge construction methods and techniques can be used.

Ms. Marshall asked how the homes would be heated. Mr. Oates replied that gas would be available from East Street.

Mr. Marsh asked for confirmation that the property has access over an existing easement. Atty. Seigenberg replied that the existing drive-way could only be used for one house, adding that the

Limited Project status is required to be able to access the site's upland and other areas for the proposed development. Mr. Marsh asked for confirmation that the access services the one house on the lot. Atty. Seigenberg replied "yes."

Mr. Marsh asked, so you still have access for one house and you could sell the one house, is that right? Atty. Seigenberg replied "yes."

Mr. Marsh requested confirmation whether the applicant believes the Limited Project provisions provide for access to use the property for its highest and best use. Atty. Seigenberg responded that they are trying to build a 12-lot subdivision.

Atty. Seigenberg stated that the applicant had spent a lot of time and money to get to this level.

Mr. Davis asked what the applicant would do if the Commission did not grant Limited Project Status for the proposed project. Atty. Seigenberg replied that they would not be able to build the subdivision.

Ms. Johnson stated that Coneco's revised stormwater calculations had excluded stormwater impacts for the detention basin. She also asked why the stormwater detention basin is proposed at the top of the hill, when Mr. Oates had indicated that it needed to be at the low point of the site. Ms. Johnson requested that the justification for the location of the stormwater detention basin be provided in writing.

Ms. Johnson asked where, in the Limited Project provision, it states that they can develop all of the property.

Ms. Marshall reiterated that they would need DEP authorization first, which would trigger a MEPA review, and then asked whether an ENF filing was needed. Mr. Oates responded that no state permit is required.

Mr. Boette asked Ms. Pierce if she had any input. Ms. Pierce had the following comments:

1. The applicant's representatives have stated that the proposed project meets the performance standards of the Act, so wondered why they filed under the Limited Project provision. She explained that Limited Project Status is for projects that can't meet the performance standards. The purpose of Limited Projects is to allow projects in which wetlands will be crossed with a new roadway to provide access to otherwise unreachable upland areas.
2. In Coneco's response to BSC's letter, comment #6, they still have not addressed the requested alternative analysis of designs that reduce, minimize and mitigate a project's environmental impacts.
3. She reminded the Commission that they have the discretionary authority to grant or deny a request for Limited Project Status, according to the DEP's Wetlands Policy 88-2 [access roadways for limited projects, interpretation of 310 CMR 10.53(3)(e)]. They should follow the policy's recommendations to determine whether Limited Project Status actually applied to the proposed project.

Mr. Lucas responded to Ms. Pierce's comments by addressing the first part of the DEP policy's criteria, which speaks to alternative means of access. Ms. Pierce stated that the second part of the DEP criteria still needed to be addressed; the second part was to evaluate the magnitude of the wetlands impacts proposed and the significance of each wetland to the interests of the Act.

The applicant's representatives asked why the Commission's questions about Limited Project Status had not been brought up earlier in the hearing's discussions.

Sean McCarthy of 4 Abby Lane stated that Limited Project Status *was* brought up during previous meetings before both the Conservation Commission and the Planning Board.

Atty. Seigenberg asked to continue the meeting for four weeks, so the meeting was continued to the meeting on March 23.

Motion was made by Ms. Marshall to continue the NOI hearing for 204 East Street, Forge Estates, DEP #157-528 to March 23, 2015; seconded by Ms. Johnson. **Vote: 6-0-0**

Fisher Street ANRAD, DEP #157-530, Continued Hearing

The Applicant's representatives, Briscoe Lang of PARE Corporation and Atty. Frank Spillane, attended the continued hearing.

The Commissioners had participated in a Site Walk in early January, before the snowstorms. Mr. Boette noted that he had observed standing water in one area and questioned whether there was an intermittent stream in the area.

Mr. Lang responded that he had spoken to Lauren Hastings, who had flagged the property, and she stated that she did not find any wetland soils or vegetation in those locations that would indicate the presence of a stream. He also read the definition of "stream" from 310 CMR 10.04 Definitions, which states:

"Such a body of running water which does not flow throughout the year (*i.e.*, which is intermittent) is a stream except for that portion upgradient of all bogs, swamps, wet meadows and marshes."

Ms. Johnson asked whether the Army Corps of Engineers had jurisdiction over the intermittent stream, speaking to their different standards of determination wetlands which included vegetation, soils and hydrology.

Mr. Lang stated that the intermittent streams on the site were not within Corps jurisdiction. Ms. Johnson advised that the Corps would make this determination regarding intermittent streams, advising Mr. Lang that he should request a jurisdictional determination from the Corps.

There were no public comments.

Motion was made by Ms. Marshall to close the hearing for Fisher Street, DEP #157-528; seconded by Mr. Davis. **Vote: 6-0-0**

Regulations for Foxborough's Wetland Protection Code, Chapter 267 (formerly Article IX)

Ms. Pierce would like to add regulations regarding ACEC and other resource areas' Performance Standards.

The Commission discussed creating a sub-committee draft the regulations and then report back to the Commission during a regular meeting. Ms. Johnson, Ms. Marshall and Mr. Marsh agreed to be on this sub-committee and would plan to meet in the near future.

Motion was made by Ms. Johnson to continue the Public Hearing for the Regulations to Foxborough's Wetlands Bylaw to March 9, 2015; seconded by Mr. Marsh. **Vote: 6-0-0.**

Highlawn Farm Subdivision, DEP#157-450, PCoC

John Walsh has requested a Partial Certificate of Compliance for his portions of Highlawn Farm Subdivision (Lawton Lane, Mann Lane, and Plimpton Road in their entirety) and had submitted an As-Built Plan. Ms. Pierce had asked Town Planner Sharon Wason if Mr. Walsh had satisfied the Planning Board's requirements of this section and Ms. Wason said that he had.

Motion was made by Ms. Johnson to sign the Partial Certificate of Compliance for the Highlawn Farm Subdivision's Lawton Lane, Mann Lane, and Plimpton Road; seconded by Mr. Marsh. **Vote: 6-0-0.**

72 West Street, DEP #157-444, CoC

A Certificate of Compliance for this filing was found to have been signed and issued in 2009, but it was never recorded. Al Daniels would like the Commission to re-sign a copy of this CoC, in case the Registry of Deeds requires an original, signed form.

Motion was made by Ms. Johnson to sign the replacement Certificate of Compliance for 72 West Street, DEP #157-444; seconded by Mr. Marsh. **Vote: 6-0-0.**

Meeting Adjourned

Motion was made by Mr. Davis to adjourn the meeting; seconded by Ms. Johnson. **Vote: 6-0-0**
The meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Eric Nelson, Clerk

Draft minutes submitted by Diana Gray: 3/2/15
Approved by Commission: 4/27/15

Documents, Not Referenced Above

Attached Documents

1. Agenda, February 23, 2015
2. Meeting Sign In Sheet

Location of Other Documents

3. Manager's Report, filed in Manager's Report binder in the Conservation Office.
4. Referenced projects' documents: please see Conservation Commission's project file